RAVINDRAN P. MUTHUKRISHNAN

v.

MALAYSIAN EXAMINATIONS COUNCIL

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
HASHIM YEOP SANI FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 286 OF 1983]
16 JANUARY 1984

ADMINISTRATIVE LAW: *Certiorari - Application for leave for order - Jurisdiction - Rejection of application for enlargement of time - Effect.*

CIVIL PROCEDURE: *Application for leave for order of certiorari - Time constraint - Order 53 r. 1A - Application for enlargement of time - Effect of delay - Malaysian Examinations Council Act 1983, s. 9 - Rules of the High Court 1980, O. 53 r. 1A.*

The appellant's Sijil Tinggi Pelajaran Malaysia results awarded to him in 1982 were annulled by the Malaysian Examinations Council. (The decision of the Council was made on 6 July 1983, and served on 15 July 1983). The appellant applied for an order of *certiorari* and for enlargement of time as the application was at least 8 days out of time. The application was rejected by the trial Judge who held that the delay had not been satisfactorily explained. The appellant appealed.

Held:

[1] The whole issue was clearly one of jurisdiction, only the consideration of the application for an enlargement of time being relevant.

[2] Since the trial Judge had rejected the explanation for the delay, it followed that the Court had no jurisdiction to hear the application for leave for an order of *certiorari.* Whether the application had merits or not was irrelevant. Order 53 r. 1A of the Rules of the High Court 1980, expressly directs that leave shall not be granted unless the application was made within six weeks after the date of the proceeding.

[Appeal dismissed.]

Case referred to:

Mersing Omnibus Sdn. Bhd. v. Minister of Labour and Manpower [1983] 2 MLJ 54; [1983] CLJ (Rep) 266

Legislation referred to:

Supreme Court Practice (1979) [UK], O. 53 r. 4
Malaysian Examinations Council Act 1980, s. 9
Rules of the High Court 1980, O. 53 r. 1A

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.

For the respondent - M. Mahalingam; Senior Federal Counsel

JUDGMENT

Hashim Yeop Sani FJ:

This appeal arose out of a student's dissatisfaction about the Malaysian Examinations Council's decision to annul his Sijil Tinggi Pelajaran Malaysia results awarded to him in 1982. The Council apparently did this based on the undisputed fact that his scribbled notes were found on his table during an examination on a Chemistry paper. Basically his complaint was that he had already explained the circumstances leading to a discovery of the scribbled notes on his table and secondly he was not given an opportunity to be heard before his examination results were annulled by the Council.

On 17 March 1983 the STP results were released and the appellant obtained the results slip with annulment of the Chemistry results endorsed on the slip. He appealed for a review of this annulment to the Malaysian Examinations Council in his letter dated 27 March 1983. On 3 June 1983 he wrote again to the Council to expedite the hearing of his appeal. In the meantime the appellant had applied for a place in the local universities as well as in the University of Singapore. Ultimately only the Universiti Sains Malaysia Penang offered him a place in the Science Course Year 1.

On 9 July 1983 the Malaysian Examinations Council notified the appellant that the Council in exercise of its powers under s. 9 of the Malaysian Examinations Council Act 1980 had annulled all his results in the 1982 examination. The power of the Council is apparently contained in s. 9 of the Act which reads as follows:

> The Council shall, in relation to a specified examination, enjoy the prerogative of awarding and withdrawing certificates, withholding and cancelling the results of any candidate, and barring any person from taking the examination.

The order to disqualify his examination results was made by the Council on 6 July 1983. He received the order on 15 July 1983. Order 53 r. 1A of the Rules of the High Court, 1980 provides that leave to apply for an order of *certiorari* shall not be granted unless made within six weeks after the date of the proceeding objected to except where the delay is accounted for to the satisfaction of the Court or Judge to whom the application is made. Therefore if time began from the date the Council's decision was served, that is on 15 July 1983, then the period expired on 22 August 1983 in which case the application was 8 days out of time. If time was computed from the date of the decision of the Council, then the application would be 13 days out of time.

The trial Judge heard the appellant's explanation for the delay. Briefly his explanation was that by 6 July 1983 the appellant had already been admitted into the Universiti Sains Penang. It was also stated in his affidavit that the notification of the Council was not brought to his solicitor's attention until much later. The explanation for the delay was not accepted by the trial Judge and he ruled that the delay had not been satisfactorily explained. Looking at the explanation we cannot honestly say that the Judge was wrong in rejecting the explanation as being unsatisfactory.

The meat of the complaint of the appellant is contained in para. 14 of his affidavit (p. 9) supporting his application for leave which affidavit also purported to apply for an enlargement of time. It is clear that the application for an enlargement of time was not made in a proper manner as the application in the notice of motion was for leave to apply for an order of *certiorari.* The application in the notice of motion itself being out of time was therefore not

properly before the Court.

The Judge dealt with two aspects of what he thought was the issue before him. Firstly he dealt with the reason for the delay in applying for an enlargement of time. Secondly he dealt with the merits of the case if the explanation for the delay was accepted.

In our view the whole issue is clearly one of jurisdiction. In the event only the first consideration of the Judge is relevant. Since the Judge rejected the explanation for the delay it follows that the Court had no jurisdiction to hear the application for leave for an order of *certiorari*. Whether the application for an order of *certiorari* had merits or not was irrelevant. This principle is implicit in *Mersing Omnibus Sdn. Bhd. v. Minister of Labour and Manpower* [1983] CLJ (Rep) 266. There has been no jurisdiction to hear the application for *certiorari* because Order 53 r. 1A of the Rules of the High Court 1980 expressly directs that leave shall not be granted "unless the application is made within six weeks after the date of the proceeding".

There are constraints which may or may not be necessary but brought about by a technicality of procedure but which the Court has to enforce. A more enlightened situation would seem to obtain from the new English Supreme Court Practice (1979) which brought forth the provision (O. 53 r. 4) that leave to apply for judicial review will be refused only if there has been "undue delay" or "unreasonable delay" in making the application. But the Rules of the High Court 1980 are our own rules of procedure and we must abide by them as they appear.

Appeal dismissed with costs.

Also found at [1984] 1 CLJ 232